

1 ADAM PAUL LAXALT
2 Nevada Attorney General
3 JARED M. FROST
4 Senior Deputy Attorney General
5 Nevada Bar No. 11132
6 FRANK A. TODDRE II
7 Nevada Bar No. 11474
8 Deputy Attorney General
Office of the Attorney General
Bureau of Litigation
Public Safety Division
555 E Washington Ave, Suite 3900
Las Vegas, Nevada 89101
Phone: (702) 486-3177
Email: jfrost@ag.nv.gov

9 *Attorneys for Defendants Miguel Flores-Nava,
10 Jennifer Nash, and Sheryl Foster*

11
12 FRANCIS JOHNSON,

13 Plaintiff,

14 v.

15 STATE OF NEVADA, et al.,

16 Defendants.

17 Case No. 2:14-cv-01425-GMN-PAL

18
19
20
21
**DEFENDANT FOSTER'S MOTION TO
EXCUSE HER PARTICIPATION AT THE
SETTLEMENT CONFERENCE**

22
23
24
25
**Settlement conference scheduled for
October 21, 2016**

26
27
28 Defendant Sheryl Foster, by and through counsel, Adam Paul Laxalt, Nevada Attorney
General, Jared M. Frost, Senior Deputy Attorney General, and Frank A. Toddre II, Deputy Attorney
General, hereby submit this motion to excuse Defendant Foster's participation at the settlement
conference scheduled for October 21, 2016. The motion is made and based on the following
points and authorities, the attached declaration, the pleadings and papers on file herein, and any
other evidence the Court deems appropriate to consider.

///

///

1 **I. PROCEDURAL HISTORY**

2 This is an inmate civil rights action filed pursuant to 42 U.S.C. section 1983. See ECF
3 No. 19 (Plaintiff's amended complaint). On December 19, 2014, this Court screened Plaintiff's
4 Complaint. See ECF No. 18. Pursuant to the Court's screening order, Plaintiff was permitted to
5 proceed on one count of retaliation against Defendants Flores-Nava, Pharris, Nash, and Foster.
6 *Id.* at 6.

7 On April 14, 2016, Plaintiff filed a motion for summary judgment. ECF No. 53. On April 29,
8 2016, Defendants filed a motion for summary judgment. ECF No. 56. On June 15, 2016, the
9 Court scheduled a settlement conference for August 19, 2016. ECF No. 66. On July 14, 2016,
10 the Court rescheduled the settlement pursuant to Defendants' request for October 21, 2016.
11 ECF No. 71. This timely motion follows. See ECF No. 66 at 2 ("A request for an exception to the
12 above attendance requirements must be filed and served at least one week prior to the
13 settlement conference.").

14 **II. ARGUMENT**

15 Defendant Foster respectfully requests that she be excused from participating at the
16 settlement conference set for October 21, 2016. Defendant Foster submits that there is good
17 cause to excuse her based on the following considerations. First, Defendant Foster's only
18 involvement in this matter relates to her role as a grievance responder. Defendant Foster
19 responded to thousands of individual grievances in her former capacity as Deputy Director for
20 the Nevada Department of Corrections, was not personally involved in the cell search that is the
21 subject of this lawsuit, and has no independent recollection of responding to Plaintiff's grievance.
22 Exhibit 1 (Declaration of Sheryl Foster). Consequently, it is unlikely that Defendant Foster has
23 information that would assist the Court in facilitating settlement discussions between the parties.
24 Second, Defendant Foster currently resides in Kingman, Arizona, at least five (5) nights a week,
25 and would be required to travel to Las Vegas from Arizona and take leave from her job to attend
26 the conference. *Id.* Based on the foregoing, Defendant Foster respectfully requests that she be
27 excused from participating at the settlement conference.

28 ///

III. CONCLUSION

The Court should grant Defendant Foster's motion to excuse her participation at the upcoming settlement conference.

DATED this 30th day of August, 2016.

ADAM PAUL LAXALT
Nevada Attorney General

By: /s/ Jared M. Frost
JARED M. FROST
Senior Deputy Attorney General
Bureau of Litigation
Public Safety Division

Attorneys for Defendants

IT IS SO ORDERED this 1st day
of September, 2016.

Peggy A. Leen
United States Magistrate Judge

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the State of Nevada, Office of the Attorney General, and that on the 30th day of August, 2016, I served the foregoing, **DEFENDANT FOSTER'S MOTION TO EXCUSE HER PARTICIPATION AT THE SETTLEMENT CONFERENCE**, by causing a true and correct copy thereof to be filed with the Clerk of the Court, using the electronic filing system, and by causing a true and correct copy thereof to be delivered to the Department of General Services, for mailing at Las Vegas, Nevada, addressed to the following:

Francis Johnson, #45800
Southern Desert Correctional Center
P.O. Box 208
Indian Springs, Nevada 89070
Plaintiff, Pro Se

/s/ Carol A. Knight
CAROL A. KNIGHT
An employee of:
STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

EXHIBIT 1

Declaration of Sheryl Foster

EXHIBIT 1

1 DECLARATION OF SHERYL FOSTER

2 I, SHERYL FOSTER, hereby declare based on personal knowledge and/or information
3 and belief, that the following assertions are true.

4 1. I am currently employed in Kingman, Arizona, and reside in Kingman at least
5 five (5) nights a week.

6 2. I was formerly employed as a Deputy Director for the Nevada Department of
7 Corrections (NDOC) from September 2014 to January 2016.

8 3. I am a named Defendant in in the matter of *Johnson v. State of Nevada*, USDC
9 Case No. 2:14-cv-1425. I am informed that a settlement conference has been scheduled for
10 October 21, 2016, and that this Court's order requires all Defendants to attend in person.

11 4. I make this declaration in support of my request to be excused from participating
12 in the October 2016 settlement conference. Attending the conference would require me to
13 travel to Las Vegas from Arizona and take leave from my job. In addition, I was not personally
14 involved in the cell search that is the subject of the lawsuit. Furthermore, I responded to
15 thousands of inmate grievances in my former capacity as Deputy Director and have no
16 independent recollection of responding to Mr. Johnson's grievance.

17 Pursuant to 28 U.S.C. section 1746 Declarant certifies, under penalty of perjury, that
18 the foregoing is true and correct.

19 DATED this 25th day of August, 2016.

20 
21 SHERYL FOSTER

22

23

24

25

26

27

28